

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.633/2003

Decided on.12.9.2007

Dinesh Kumar.

...Petitioner.

Versus

Balbir Singh and others.

...Respondents

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?¹. yes.

For the petitioner : Mr. K.D. Batish, Advocate.

For the respondents Mr. R.S. Kanwar, Advocate for respondents No.1 and 2.

Mr. B.M. Chauhan, Advocate for respondent No.3

Rajiv Sharma, J.

A challenge has been laid to the order dated 19.4.2003 passed by the Permanent Lok Adalat, Kangra at Dharamshala in MACP No. 10-G/2002.

The brief facts necessary for the adjudication of this petition are that the petitioner was driving his tempo bearing No. HP-20-5587 on 13.11.2001 and was proceeding from Kaloha to Pragpur. Bus bearing registration No. HP-55-3486 (M/s Sayal Bus Service) came from Pragpur side and dashed against the tempo resulting in grievous injuries to the petitioner. The accident took place around 10.30 A.M. He was firstly taken to hospital at Dehra (District Kangra) and thereafter underwent treatment in Bharaj Nursing Home, Jalandhar Road, Hoshiarpur. He remained indoor patient in Bharaj Nursing Home with effect from 13.11.2001 to 17.11.2001 and also underwent surgical operation costing

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?* yes.

Rs. 80,000/-. He filed a petition before the Motor Accident Claims Tribunal-1, Kangra at Dharamshala in the month of January, 2002 claiming the compensation for the grievous injuries received in the accident resulting in fracture of right Tibia and many other injuries. He had claimed in all Rs. 3 lakhs towards compensation.

Respondents No.1 and 2 had filed detailed reply to the claim petition and had admitted that the bus was insured with New India Insurance Company Limited, Branch Office Dev Pal Chowk, Hamirpur i.e. respondent No.3. The respondent No.3 had also filed separate reply and in preliminary objection it has denied that the bus bearing No. HP-55-3486 was insured with it. The objection was also taken with regard to the validity of the driving licence of the petitioner besides the objections of invalid certificate of registration. The learned Motor Accident Claims Tribunal issued notices to the respondents on 28.2.2002. The Motor Accident Claims Tribunal, Kangra at Dharamshala has passed the following order on 19.2.2003:

**“19.2.2003: Present: Sh. K.C. Sharma, Counsel for the applicant.
Sh. M.G. Thakur, counsel for the respondents No.1 and 2.
Ms. Sangeeta Guatam, counsel for the respondent No.3.**

Reply filed and copies supplied. Counsel for the parties made oral submissions that this case be placed before the Lok Adalat as there is every likelihood of compromise. Heard. Allowed. Be placed before the Lok Adalat on 21.3..2003

**Sd/-
Motor Accident Claims Tribunal (II)
Kangra at Dharamshala.”**

The matter was thereafter listed on 21.3.2003 before the Permanent Lok Adalat at Dharamshala. Order dated 21.3.2003 reads thus:

“21.3.2003: Present: Sh. K.C. Sharma, Adv. Counsel for the applicant.

Sh. M.G. Thakur, counsel for the respondents No.1 and 2.

Ms. Sangeeta Guatam, counsel for the respondent No.3.

Further time sought for conciliation. Allowed. Be listed before next Lok Adalat on 19.4.2003, when parties to appear in person.

**Sd/-
Member
Permanent Lok Adalat
Dharamshala**

**Sd/- Judge
Permanent Lok Adalat
Dharamshala."**

The matter thereafter came up before the Permanent Lok Adalat at Dharamshala on 19.4.2003 and the following order was passed:

**"19.4.2003: Present: Sh. K.C. Sharma, Adv. Ld. Counsel for the petitioner.
Sh. M.G.Thakur, Adv.Id counsel for the respondents No.1 & 2.
Sh. Santosh Kumar, Divisional Manager of Insurance
Company- respondent No.3 in person.
Ms. Sangeeta Gautam counsel for respondent No.3.**

Case taken up for conciliation and finally conciliation effected. Statement of Shri K.C. Sharma, Id. counsel for the petitioner as well as of Sh. Santosh Kumar, Divisional Manager of Insurance Company recorded.

In view of the statement of the parties, the petition is allowed and a sum of Rs. 10,000/- (Rupees ten thousand only) is awarded as compensation in full and final settlement of the claim petition, in favour of the petitioner and against respondent No.3, who shall deposit this amount within 45 days from today failing which, shall be liable to pay interest at the rate of 9% per annum from today, till realization thereof. File, after due completion be considered to record room.

**Announced:
19.4.2003.**

**Sd/-
Member
Permanent Lok Adalat
Dharamshala**

**Sd/-
Judge
Permanent Lok Adalat
Dharamshala."**

The order dated 19.4.2003 was passed on the basis of the statement of Sh. Santosh Kumar, Divisional Manager, New India Insurance Company dated 19.4.2003 whereby he had agreed to settle the

claim for a sum of Rs. 10,000/-. The statement of Sh. K.C. Sharma, Advocate learned counsel appearing for the claimant was also recorded on the same day i.e. 19.4.2003. He had stated that he had the necessary instructions as per the conditions enumerated in power of attorney and he had agreed to compromise the matter on the basis of the statement of Sh. Santosh Kumar, Divisional Manager dated 19th April, 2003. It is in these circumstances that the order dated 19th April, 2003 was passed.

Mr. K.D. Batish, Advocate had strenuously argued that the order dated 19th April, 2003 is not sustainable in the eyes of law and he further contended that the matter could not be sent to the Permanent Lok Adalat, Kangra at Dharamshala on 19th April, 2003 since according to him only those matters could be adjudicated upon by the Permanent Lok Adalat before the dispute is brought before any court. He elaborated his submission by stating that since the parties had approached the learned Motor Accident Claims Tribunal, Kangra at Dharamshala, the matter could not be referred to the Permanent Lok Adalat. Mr. Batish also contended that as per order dated 21.3.2003, parties were directed to be present in person as is evident from the record. He further submitted that on 19.4.2003, the parties were not present and his client had not authorized Mr. K.C. Sharma, Advocate to compromise the matter. Alternatively he had submitted that the Permanent Lok Adalat has not even taken into consideration the parameters laid down under section 22-D of the Legal Services Authorities Act, 1987.

Mr. B.M. Chauhan, Advocate had supported the order dated 19.4.2003. He had also contended that once the matter has been compromised and settled by the Permanent Lok Adalat in view of section 22 (E) of the Legal Services Authorities Act, 1987 this Court has no jurisdiction to entertain and adjudicate upon the present petition.

I have heard the learned counsel for the parties and perused the record very carefully.

Before the rival submissions of the learned counsel for the parties are taken into consideration, it will be apt to refer to certain salient provisions of the Legal Services Authorities Act, 1987 (hereinafter referred to as the Act for brevity sake). The Act has been enacted to constitute Legal Services Authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity. Section 2 (d) being a dictionary clause defines expression “Lok Adalat” to mean a Lok Adalat organized under Chapter VI. Chapter VI of the Act deals with Lok Adalats. Sub section (5) of section 19 provides that Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of (i) any case pending before; or (ii) any matter which is falling within the jurisdiction of and is not brought before, any court for which the Lok Adalat is organized. Section 20 postulates the cases of which the Lok Adalat can take cognizance. Section 20 in its entirety reads thus:

“20. Cognizance of cases by Lok Adalats:

(1) Where in any case referred to in clause (i) of sub-section (5) of section 19,-

i.(a) the parties thereof agree; or

(b) one of the parties thereof makes an application to the court;

for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement; or

ii. the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat;

the court shall refer the case to the Lok Adalat:

Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

(2) Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organizing the Lok Adalat under sub-section (1) of section 19 may, on receipt of any application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination:

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Whether any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in

sub-section (2), that Lok Adalat shall advise the parties to seek remedy in a court.

(7) Where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1)."

Section 21 provides that every award of the Lok Adalat shall be deemed to be a decree of a civil court, or as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the court fee paid in such case shall be refunded in the manner provided under the Court Fees Act. It is further stipulated under sub-section (2) of Section 21 that every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award. Section 22 enumerates the powers of the Lok Adalat. Section 22 (A) provides that for the purposes of sections 22 and 23, "Permanent Lok Adalat" means a Permanent Lok Adalat established under sub-section (1) of Section 22 (B).

Section 22 (B) provides for the establishment of Permanent Lok Adalats. Section 22 (C) provides the mechanism for Permanent Lok Adalats to take cognizance. Procedure of Permanent Lok Adalat has been provided under section 22 (D) and award of Permanent Lok Adalat is to be treated final under section 22 (E). Section 22 deals with powers of Lok Adalat.

The combined reading of the provisions contained in Chapter-VI and Chapter VI-A makes it clear that there are two types of Lok Adalats (i) Lok Adalat as defined under sub section (d) of section 2 which means Lok Adalat organized under Chapter VI and Permanent Lok Adalat as defined under sub clause (a) of section 22 (A) to mean a "Permanent Lok Adalat"

established under sub-section (1) of Section 22 (B). Section 19 provides that every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organize Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit and the Lok Adalat shall have the jurisdiction to determine and arrive at a compromise or settlement between the parties to a dispute in respect of any case pending before or any matter which is falling within the jurisdiction of and is not brought before any court for which the Lok Adalat is organized.

Section 20 in clear terms provides that where the parties agree or one of the parties makes an application to the Court for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of settlement and the Court is satisfied that the matter is an appropriate one to be taken cognizance by the Lok Adalat. The award made by the Lok Adalat organized as per section 19 has been made final and binding on all the parties to the dispute and no appeal has been provided to any court against the award. Chapter VI-A provides for pre-litigation conciliation and settlement. The establishment of Permanent Lok Adalat is different from organization of Lok Adalat as per section 19. As far as cognizance of matters to be taken by Permanent Lok Adalat is concerned, any party to dispute may before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of dispute. The procedure for Permanent Lok Adalat is different from the other Lok Adalat organized under section 19. It is evident from the language employed in section 20 as far as the Lok Adalats are concerned that after the receipt of the reference before it, it has to act with utmost expedition to arrive at a compromise or settlement

between the parties and where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court from which the reference has been received and thereafter the court to whom the record has been returned has to proceed to deal with such case from the stage which was reached before such reference was made to the Lok Adalat.

The Permanent Lok Adalat after the receipt of the application is required to direct the party to file before it a written statement, stating therein the facts and nature of the dispute under the application and the points or issues in such dispute and grounds relied in support of, or in opposition to, such points or issues, as the case may be. The applicant can supplement such statement with any document and other evidence. The other parties are required to be permitted to file reply to the statement of claim preferred by the applicant. Thereafter the Permanent Lok Adalat has to conduct conciliation proceedings between the parties and it is the duty cast upon the other party to the application to cooperate in good faith with the Permanent Lok Adalat in conciliation of the dispute relating to the application. The Permanent Lok Adalat if it is of the opinion that there exists element of settlement it may formulate the terms of a possible settlement of the dispute and give to the parties concerned for their observations and in case the parties reach at an agreement on the settlement of dispute, they shall sign the settlement agreement and the Permanent Lok Adalat shall pass an award in terms thereof. If during the course of proceedings before the Permanent Lok Adalat, the parties fail to reach an agreement, the dispute is to be adjudicated upon by the Permanent Lok Adalat, if the dispute does not relate to any offence. Thus

it is evident that the procedure to be adopted by the Lok Adalat and Permanent Lok Adalat is different.

It is evident from the order dated 19th February, 2003 that the parties have agreed to get the matter placed before the Lok Adalat as there was likelihood of compromise. Vide order dated 21st March, 2003, further time was sought for conciliation which was allowed and the matter was directed to be listed before the next Lok Adalat to be held on 19th April, 2003 when the parties were to remain present in person. The order dated 19th April, 2003 has been passed by the Permanent Lok Adalat, Kangra at Dharamshala. The Permanent Lok Adalat, Kangra at Dharamshala as per section 22 (C) could only take the cognizance of the matter if it was not pending before any other Court. In the present case, the matter was pending before the learned Motor Accident Claims Tribunal, Dharamshala and the same could only be referred to the Lok Adalat as per section 20 of the Act and same could not be referred to the Permanent Lok Adalat. Thus the order passed by the Permanent Lok Adalat, Dharamshala dated 19.4.2003 is without jurisdiction and liable to be set aside.

Despite the finding recorded by this Court that the order passed by the Permanent Lok Adalat was without jurisdiction, it is desirable to see whether the procedure stipulated under section 22 (D) was followed by the Permanent Lok Adalat or not as a guiding principle for future litigation. It is evident from the order dated 21.3.2003 that the parties were directed to present in person before the Lok Adalat. The parties were not present before the Lok Adalat on 19th April, 2003 as is evident from the order, though; the claimant was represented by Sh. K.C. Sharma, Advocate. The case has been compromised on the basis of the statement made by Sh. Santosh Kumar, Divisional Manager of the New India Insurance

Company, Mandi. He had stated that he is ready to pay a sum of Rs. 10,000/- to the claimant. Mr. K.C. Sharma, Advocate on the basis of the conditions containing in power of attorney had agreed to compromise the matter for a paltry sum of Rs. 10,000/-. The Permanent Lok Adalat was required to see whether the compromise or settlement being arrived at was equitable more particularly when it was dealing with a case of victim who had suffered 15% disability being a driver. A sum of Rs. 10,000/- agreed to be paid by respondent No.3 was less than the amount even to be paid under no fault liability under section 140 of the Motor Vehicles Act, 1988. The duty was cast upon the Divisional Manager, who was the representative of the New India Insurance Company to ensure that just and fair compensation was offered to the victim. Respondent No.3 is a State within the provisions of Article 12 of the Constitution of India and this officer has to strive to ensure that the just compensation is paid to the victims. The very concept of organizing constitutional Lok Adalats will be frustrated if the compromise/settlements are arrived at causing immense hardships to the claimants. The idea of constitution of Lok Adalats is to give speedy justice and mitigate the hardships of the victims. The very important aspect which has been over looked by the Permanent Lok Adalat while striving for the compromise was that the victim was a driver who has received grievous injury resulting in fracture of right tibia. Though the claimant had suffered 15% disability, but the same has to be taken into consideration vis-à-vis his profession i.e. driving. A clerk or other professional where physical work is not required may discharge his duties efficiently even though his disability is around 15% but a driver who has suffered a fracture of right tibia, it will be difficult for him to drive a vehicle. The claimant had remained indoor patient and had incurred expenses of Rs. 80,000/- for treatment. He was out of employment for the days he

was convalescing. These aspects have also been over looked by the Permanent Lok Adalat.

Mr. B.M. Chauhan, Advocate had argued that the compromise has been effected on the basis of statement made by the Advocate of the claimant whose statement was also recorded on 19.4.2003. This Court is of the opinion that the Advocate had no jurisdiction to make concession on question of law. The concession given on question of law, more particularly, when the jurisdiction of the Permanent Lok Adalat was involved will not be binding upon the claimant.

Their Lordships of the Hon'ble Supreme Court in ***Union of India Versus Hira Lal and others***, (1996) 10 SCC 574 have held that the concession made by the Government Advocate that the respondents were entitled to solatium, being a question of law, was held not binding on the appellant. Their Lordships have held as under:

“We must mention that the concession made by the Government Advocate before the learned District Judge that the respondents are entitled to solatium and interest as provided in the Land Acquisition Act, 1894 (as amended in 1984) was a totally unwarranted concession. Being a concession on a question of law, it cannot be said to be binding upon the appellant. It is surprising how the Government Advocate could have made such a concession which is totally untenable in law and is prejudicial to the interests of the parties he was representing. We are equally of the opinion that this was not a matter in which the revision petition filed by the appellant should have been dismissed in limine by the High Court.”

The Court is also required to look into a specific objection raised by Mr. B.M. Chauhan, Advocate with regard to the maintainability and adjudication of the writ petition by this Court in view of the language

employed in section 21 as well as section 22 (E) of the Legal Services Authorities Act, 1987.

Their Lordships in ***Deokinandan Prasad Versus The State of Bihar and others***, 1971 (2) SCC 330 have held that the bar against a civil court entertaining any suit relating to the matters under the Pension Act, does not stand in the way of issuance of writ of mandamus. Their Lordships have held as under:

“Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31 (1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19 (1) (f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order, dated June 12, 1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19 (1) (f) and 31 (1) of the Constitution, and as such the writ petition under Article 32 is maintainable. It may be that under the Pension Act (Act 23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of a writ of mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law.”

Their Lordships of the Hon'ble Supreme Court in ***Kihoto Hollohan Versus Zachillhu and others***, 1992 Supp (2) SCC 651 has held that a finality clause in paragraph 6 of the 10th Schedule does not completely exclude the jurisdiction of the courts under Articles 136, 226 and 227 of the Constitution. Their Lordships have held as under:

“In the operative conclusions we pronounced on November 12, 1991 we indicated in clauses (G) and (H) therein that judicial review in the area is limited in the manner indicated. If the adjudicatory authority is a tribunal, as indeed we have held

it to be, why, then, should its scope be so limited? The finality clause in paragraph 6 does not completely exclude the jurisdiction of the courts under Articles 136, 226 and 227 of the Constitution. But it does have the effect of limiting the scope of the jurisdiction. The principle that is applied by the courts is that in spite of a finality clause it is open to the court to examine whether the action of the authority under challenge is ultra vires the powers conferred on the said authority. Such an action can be ultra vires for the reason that it is in contravention of a mandatory provision of the law conferring on the authority the power to take such an action. It will also be ultra vires the powers conferred on the authority if it is vitiated by malafides or is colourable exercise of power based on extraneous and irrelevant considerations. While exercising their certiorari jurisdiction, the courts have applied the test whether the impugned action falls within the jurisdiction of the authority taking the action or it falls outside such jurisdiction. An ouster clause confines judicial review in respect of actions falling outside the jurisdiction of the authority taking such action but precludes challenge to such action on the ground of an error committed in the exercise of jurisdiction vested in the authority because such an action cannot be said to be an action without jurisdiction. An ouster clause attaching finality to a determination, therefore, does oust certiorari to some extent and it will be effective in ousting the power of the court to review the decision of an inferior tribunal by certiorari if the inferior tribunal has not acted without jurisdiction and has merely made an error of law which does not affect its jurisdiction and if its decision is not a nullity for some reason such as breach of rule of natural justice. [See: Administrative Law, H.W.R. Wade, (6th edn.), pp. 724-26; *Anisminic Ltd. v. Foreign Compensation Commission*, *S.E. Asia Fire Bricks v. Non-Metallic Mineral Products Manufacturing Employees Union*.]

The Hon'ble Supreme Court in *Srikant Kashinath Jituri and others Versus Corporation of the City of Belgaum*, (1994) 6 SCC 572

had considered the exclusion of civil courts jurisdiction vis-à-vis Article 226 of the Constitution of India. Their Lordships have held that difference lies in nature of jurisdiction, one conferred by the statute i.e. section 9 and other by the Constitution i.e. Article 226. Their Lordships have held as under:

“Learned counsel contended that if a writ petition is maintainable without filing the second appeal provided by Rule 20, a suit is equally maintainable. In our opinion, the said contention is based upon a misconception. Such an onerous provision may be a ground for entertaining a writ petition on the ground that the alternative remedy provided by the statute is not an adequate or efficacious remedy (see Himmatlal Harilal Mehta V. State of M.P) but that can never be a ground for maintaining a civil suit. Both the jurisdictions are different and are governed by different principles. Article 226 provides a constitutional remedy. It confers the power of judicial review on High Courts. The finality clause in a statute is not a bar to the exercise of this constitutional power whereas the jurisdiction of a civil court arises from another statute, viz., section 9 of the Code of Civil Procedure. In such case, the bar arising from an express provision like Rule 25 or arising by necessary intendment can be overridden only in cases and situations pointed out in Dhulabhai case. The jurisdiction of the civil court in such matters is governed by the principles aforesaid and the ground now urged by Shri Tarkunde is not one of the grounds recognized for invoking the jurisdiction of the civil court. It is not correct to say that whatever is good for Article 226 is good for suit as well.”

Their Lordships of the Hon'ble Supreme Court in ***L. Chandra Kumar Versus Union of India and others***, (1997) 3 SCC 261 have held that power of judicial review is a basic and essential feature of the Constitution and the jurisdiction conferred on the High Court under Articles 226 and 227 and on the Supreme Court under Article 32 is a part of basic structure of the Constitution. Their Lordships have held as under:

“We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation is equally to be avoided.”

Their Lordships of the Supreme Court in *L. Chandra Kumar Versus Union of India and others* (1997) 3 SCC 261 has declared clause 2 (d) of Article 323-A and clause 3 (d) of Article 323-B to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution unconstitutional. Similarly the Supreme Court had declared section 28 of the Administrative Tribunal Act, 1985 and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B unconstitutional. Their Lordships have held as under:

“In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will,

however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5 (6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

This Court is of the view that despite expression used in sub section (2) of section 21 of the Act that no appeal shall lie to any court against the award and the expression used like original suit, application or execution proceedings as mentioned in sub section (4) of section 22(E) will not include the writ jurisdiction. Thus the contention of Mr. B.M. Chauhan with regard to the maintainability and the adjudication of the writ petition by this Court is untenable and rejected. The Court has also to ensure that the provisions of the Legal Services Authorities Act, 1987 are implemented in letter and spirit. The manner in which the jurisdiction has been exercised by the Permanent Lok Adalat is against the very spirit of the Act.

Their Lordships of the Hon'ble Supreme Court in latest judgment i.e. A.A. ***Gopalakrishnan versus Cochin Devaswom Board and others***, 2007 (10) Scale 572 had occasion to consider the provisions of order 23 Rule 3-A of the Code of Civil Procedure. It was argued before the Hon'ble Supreme Court that the settlement in the suit was validly arrived at between the parties and as per order 23 of the Code of Civil Procedure and on the basis of Rule 3-A, the writ court could not interfere. This

contention was rejected by the Hon'ble Supreme Court as per the following observations made therein:

“Learned counsel for respondents 3 and 4 submitted that the settlement in the suit (OS No.399/1998) was validly arrived at between them (Plaintiffs) and the Devaswom Board (defendant), that the Devaswom Board had considered the proposal after taking legal advice and had duly passed a resolution to settle the suit. It is further submitted that a decree having been made in terms of the compromise and such decree having attained finality, it cannot be questioned, interfered or set aside at the instance of a third party in a writ proceeding. Order 23 Rule 3 of the CPC deals with compromise of suits. Rule 3-A provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. We are of the considered view that the bar contained in Rule 3-A will not come in the way of the High Court examining the validity of a compromise decree, when allegations of fraud/collusion are made against a statutory authority which entered into such compromise. While, it is true that decrees of civil courts which have attained finality should not be interfered lightly, challenge to such compromise decrees by an aggrieved devotee, who was not a party to the suit, cannot be rejected, where fraud/collusion on the part of officers of a statutory board is made out. Further, when the High Court by order dated 9.9.1998 had directed the Board to take possession of Sy. No. 1042/2 immediately, from respondents 3 and 4 in CDB No.3/1996, in a complaint by another devotee, it was improper for the Board to enter into a settlement with respondents No.2 and 3, giving up the right, title and interest in Sy. No. 1042/2, without the permission of the court which passed such order. Viewed from any angle, the compromise decree cannot be sustained and is liable to be set aside.”

The ratio of the judgment in case ***P.T. Thomas versus Thomas Job***, AIR 2005 SC 3575, cited by Mr. B.M. Chauhan, Advocate will not

apply in the present case since the order passed by the Permanent Lok Adalat is without jurisdiction.

The upshot of the above discussion is that:

- (i) the Permanent Lok Adalat had no jurisdiction to entertain the matter as per the scheme of the Act discussed herein above;**
- (ii) the learned Advocate appearing on behalf of claimant could not make any concession of law detrimental to the interests of the claimant;**
- (iii) the Divisional Manager of the respondent No.3 Company being a higher functionary should have taken into consideration the principles applicable to the compensation to be paid to the victims;**
- (iv) the Permanent Lok Adalat even though had proceeded to decide the matter without jurisdiction has not taken into consideration the principles of justice, equity, fair play and other legal principles as mentioned in section 22-D of the Act;**
- (v) this court has the jurisdiction to go into the legality of the orders passed by the Lok Adalat as well as the Permanent Lok Adalat if they are against the letter and spirit of the Act and the same are without jurisdiction; and**
- (vi) the order dated 19.4.2003 is without jurisdiction and liable to be set aside.**

Accordingly the writ petition is allowed. The order dated 19.4.2003 passed by the Permanent Lok Adalat is set aside. The matter is remanded back to the learned Motor Accident Claims Tribunal, Kangra at Dharamshala with the directions to decide the same on its own merits within a period of three months from the date of receipt of record alongwith copy of this judgment. In view of the facts and circumstances of the case and the manner in which the matter has been compromised by the functionary of respondent No.3-company, a costs of Rs. 11,000/- is

imposed upon the Divisional Manager of the New India Assurance Company Limited on whose statement the matter was compromised. The respondent No.3 will ensure that the cost is recovered from the Divisional Manager. To avoid further delay the parties are directed to appear before the learned Motor Accident Claims Tribunal, Kangra at Dharamshala on 13.10.2007.

(Rajiv Sharma), Judge

September 12, 2007

Awasthi